

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATIONS)	
FOR PERMIT 36-17121 AND)	ORDER GRANTING
36-17122 IN THE NAME OF)	PETITION TO INTERVENE
<u>BUCKEYE FARMS INC.</u>)	

On September 22, 2017, Buckeye Farms Inc. (“Buckeye”) filed Applications 36-17121 and 36-17122. The applications were amended on December 4, 2018 and again on January 7, 2019. The applications were protested by Idaho Power Company, the City of Pocatello, Responsible Citizens Association and a group of cities (Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, Shoshone and Wendell) (collectively the “Coalition of Cities”). The Department conducted a pre-hearing conference on November 15, 2019. During that conference, an administrative hearing was scheduled for May 5 and 6, 2020. The Department issued a *Notice of Hearing and Scheduling Order* on December 5, 2019.

On January 27, 2020, Idaho Ground Water Appropriators, Inc. (“IGWA”) filed *IGWA’s Petition to Intervene* (“Petition”). On February 5, 2020, Randy Budge, attorney for IGWA, sent an email to the hearing officer representing that Buckeye, City of Pocatello and the Coalition of Cities did not object to IGWA’s intervention. Mr. Budge was unable to confirm the positions of Idaho Power Company or Responsible Citizens Association regarding the proposed intervention. However, no motion or objection has been filed by either of those parties.

On February 6, 2020, the Coalition of Cities and the City of Pocatello filed a *Cities’ Response to IGWA’s Motion to Intervene* (“Response”). The Coalition of Cities and the City of Pocatello “do not object to IGWA’s participation” in this matter. *Response* at 1. The *Response* provides a summary of some of the ongoing settlement discussions and notes that Buckeye (not IGWA) bears the burden of demonstrating no injury to existing water rights.

Rule 352 of the Department’s Rules of Procedure (IDAPA 37.01.01) states:

Petitions to intervene must be filed at least fourteen (14) days before the date set for formal hearing, or by the date of the prehearing conference, whichever is earlier, unless a different time is provided by order or notice. Petitions not timely filed must state a substantial reason for delay. The presiding officer may deny or conditionally grant petitions to intervene that are not timely filed for failure to state good cause for untimely filing, to prevent disruption, prejudice to existing parties or undue broadening of the issues, or for other reasons. Intervenors who do not file timely petitions are bound by orders and notices earlier entered as a condition of granting the untimely petition.

Rule 353 of the Department's Rules of Procedure (IDAPA 37.01.01) states:

If a timely-filed petition to intervene shows direct and substantial interest in any part of the subject matter of a proceeding and does not unduly broaden the issues, the presiding officer will grant intervention, subject to reasonable conditions, unless the applicant's interest is adequately represented by existing parties. If it appears that an intervenor has no direct or substantial interest in the proceeding, the presiding officer may dismiss the intervenor from the proceeding.

IGWA's *Petition* was not timely because it was filed after the Department conducted a pre-hearing conference for the contested case. Because the *Petition* was not timely filed, IGWA must identify a substantial reason for the delay. The *Petition* states: "[T]he Protestants have raised issues that were not highlighted in the applications for permit, were not stated in the protests filed by the Protestants, and were not anticipated." *Petition* at 3-4. IGWA has identified a substantial reason for delay.

IGWA has demonstrated a direct and substantial interest in the pending contested case. The mitigation plan offered by Buckeye may require action by IGWA or its members. Further, any settlement reached in the matter or decision issued by the Department could affect IGWA or its members.

IGWA has agreed "to comply with all orders and notices entered to date in this matter" including the December 5th Scheduling Order. *Petition* at 4. There is no evidence in the record that IGWA's participation in the matter will disrupt the contested case schedule, will cause prejudice to existing parties or will broaden the issues before the Department. Therefore, IGWA's *Petition* should be granted.

CONCLUSIONS OF LAW

IGWA has demonstrated a direct and substantial interest in the pending contested case. IGWA's intervention in this matter will not disrupt the pending contested case, will not cause prejudice to existing parties and will not unduly broaden this issues of the case and, therefore, should be granted.

ORDER

IT IS HEREBY ORDERED that IGWA's *Petition* is GRANTED. Pursuant to Rule 710 (IDAPA 37.01.01), this order granting intervention is an Interlocutory Order.

Dated this 10th day of February, 2020.



James Cefalo
Hearing Officer

CERTIFICATE OF MAILING

I hereby certify that on the 10th day of February 2020, I mailed a true and correct copy of the foregoing ORDER GRANTING PETITION TO INTERVENE, with the United States Postal Service, postage prepaid and properly addressed to the person(s) listed below:

RE: APPLICATIONS 36-17121 AND 36-17122

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